

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by 200, 202, 203.1, 205(c), 219, 220, 1590, 1591, 2860, 2861, and 6750, Fish and Game Code; and Sections 36725(a) and 36725(e), Public Resources Code and to implement, interpret or make specific sections 200, 202, 203.1, 205(c), 219, 220, 1580, 1583, 2861, 5521, 6653, 8420(e), and 8500, Fish and Game Code; and Sections 36700(e), 36710(e), 36725(a) and 36725(e), Public Resources Code, proposes to amend Section 632, Title 14, California Code of Regulations, relating to Morro Bay State Marine Recreational Management Area, Elkhorn Slough State Marine Reserve and Dana Point State Marine Park.

Informative Digest/Policy Statement Overview

On April 13, 2007, the California Fish and Game Commission (Commission) adopted regulations to implement marine protected areas (MPAs) within the first study region being considered under the Marine Life Protection Act (MLPA, Stats. 1999, ch. 1015). Upon implementation of these regulations, questions were raised regarding potentially unintended consequences of the new regulations and errors in the consistency of one subsection.

Written testimony to the Commission from the City of Morro Bay raised, among other issues, concerns regarding the regulatory impact on necessary harbor maintenance activities including dredging.

Harbor maintenance is required for the continued viability of the working harbor and is consistent with the intent to avoid negative socio-economic impacts. The proposed regulation would specifically state that dredging under existing permitting frameworks is allowed; and allow maintenance and cleaning of vessel hulls and man-made structures including the removal of living marine resources from those structures.

Department of Fish and Game enforcement staff noted after implementation of the new MPAs that by rounding the northern boundary coordinate in the Elkhorn Slough State Marine Reserve to the nearest half minute of latitude, an existing shoreline fishing access point at Kirby Park was unintentionally closed. The existing regulation lists the northern boundary as 36 degrees 50.50' North latitude. The proposed change would move this boundary to its originally intended location of 36 degrees 50.40' North latitude, a change of approximately 550 feet, in order to continue to allow fishing at the only public access point in upper Elkhorn Slough at Kirby Park (Figure 1).

Existing regulations in the Dana Point State Marine Conservation Area include restrictions on entry into the area for the purpose of taking marine life, allow for the appointment of a Director of the Dana Point State Marine Conservation Area, and provide authority for the Director to permit certain activities. The existing regulations, however, were not updated to reflect the current designation as a state marine conservation area. This leads to confusing language that refers to a previous "State Marine Park" designation which is no longer appropriate. The proposed changes remove these incorrect references in subsections 632(b)(89)(C) through (G) and replace them with the correct designation of state marine conservation area.

Figure 1. Existing and proposed boundary of the Elkhorn Slough State Marine Reserve in order to allow fishing activities to continue from Kirby Park.



NOTICE IS GIVEN that any person interested may present statements, orally or in writing, on all options relevant to this action at a hearing to be held at the North Tahoe Conference Center, 8318 North Lake Blvd., Kings Beach, California, on Thursday, September 4, 2008 at 10:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, on all actions relevant to this action at a hearing to be held in the City Council Chambers, 2000 Main Street, Huntington Beach, California, on Friday, November 14, 2008 at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before October 31, 2008, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on November 10, 2008. All comments must be received no later than November 14, 2008, at the hearing in Huntington Beach, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sheri Tiemann at the preceding address or phone number. **Marija Vojkovich, Marine Region, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The Department does not believe that the proposed action will have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

Any additional costs to State agencies for enforcement, monitoring, and management of MPAs are difficult to estimate and depend on not only the impacts of the proposed regulation but also other regulations and processes. Given that the proposed activities were previously occurring in the Morro Bay SMRMA and Elkhorn Slough, it is unlikely that changes to existing enforcement would be required.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None

- (f) Programs mandated on Local Agencies or School Districts: None

- (g) Costs Imposed on Any Local Agency or School District that is required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None

- (h) Effect on Housing Costs: None

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: August 12, 2008

John Carlson, Jr.
Executive Director